

BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 172

Served July 20, 1962

IN THE MATTER OF:

Order of Investigation of the)	
Operations of Montgomery Charter)	Docket No. 18
Service, Inc., Bethesda, Maryland)	

APPEARANCES:

Russell W. Cunningham, General Counsel, Washington Metropolitan Area Transit Commission.

William F. Reed, Esq., and Robert J. Stanford, Esq., appearing on behalf of Montgomery Charter Service, Inc., respondent.

Linwood C. Major, Jr., Esq., appearing on behalf of Airport Transport, Inc., Intervenor.

John R. Sims, Jr., Esq., appearing on behalf of D. C. Transit System, Inc. and D. C. Transit System of Maryland, Inc., and Alexandria, Barcroft and Washington Transit Company, Intervenor.

Manuel J. Davis, Esq., appearing on behalf of Washington, Virginia and Maryland Coach Company, Inc., Intervenor.

By Order No. 150, served May 18, 1962, the Commission instituted an investigation into the transportation being performed in the Washington Metropolitan District by Montgomery Charter Service, Inc., Bethesda, Maryland, hereinafter referred to as respondent. The general nature of said order was to provide respondent an opportunity to show cause, at a public hearing, as to why respondent should not be required to cease operations for the reason that the transportation being performed by respondent was in violation of Section 4(a) of Article XII, Title II, of the Compact. Pursuant to notice, duly given, a hearing was held on June 5, 1962, before the Honorable Albert L. Sklar, Vice Chairman of the Commission. Airport Transport, Inc., D. C. Transit System, Inc., D. C. Transit System of Maryland, Inc.,

A. B. & W. Transit Company and W. V. & M. Coach Company, Inc., were permitted to intervene in the proceeding on the day of the hearing. The intervenors are engaged in the transportation of passengers within the Washington Metropolitan District, including transportation between fixed termini and on regular schedules.

At the hearing, the Commission's staff submitted evidence through its Chief Clerk, Mr. Robert W. Pully. The respondent submitted evidence through its Executive Vice President, Mr. Robert J. Stanford.

The evidence shows that respondent is engaged in the transportation of passengers, by motor vehicles, such vehicles being limited to a seating capacity of eight passengers or less, excluding the driver, between points and places in Montgomery County, Maryland, on the one hand, and points and places in the Metropolitan District, on the other. In addition, transportation is also performed between points and places in Montgomery County.

The operations being conducted by respondent may be classified as follows:

(1) Transportation conducted on a regular scheduled basis and between fixed termini; namely, between respondent's terminal in Montgomery County, Maryland, and the Washington National Airport, Virginia.

(2) On-call operations from points and places in Montgomery County to the Washington National Airport primarily, but not necessarily restricted to the Washington National Airport.

(3) Transportation of school children to and from schools.

(4) Operations conducted pursuant to a contract with Vitro Laboratories, Montgomery County, Maryland, whereby foreign students are provided transportation between the Washington National Airport and Vitro Laboratories and/or their residence, such transportation being performed at the direction of Vitro Laboratories.

The issue in this case must be resolved by reference to Sections 1(c), 2(d) and 4(a) of Article XII, Title II, of the Compact.

Section 1(c) reads as follows:

"Notwithstanding the provisions of paragraph (a) of this section, this Act shall apply to taxicabs and other vehicles having a seating capacity of eight passengers or less in addition to the driver thereof with respect only to

(i) the rate or charges for transportation from one signatory to another within the confines of the Metropolitan District, and (ii) requirements for minimum insurance coverage."

Section 2(d) reads as follows:

"The term "taxicab" means any motor vehicle for hire (other than a vehicle operated, with the approval of the Commission, between fixed termini on regular schedules) designed to carry eight persons or less, not including the driver, used for the purpose of accepting or soliciting passengers for hire in transportation subject to this Act, along the public streets and highways, as the passengers may direct."

The pertinent portion of Section 4(a) reads as follows:

"No person shall engage in transportation subject to this Act unless there is in force a certificate of public convenience and necessity issued by the Commission authorizing such person to engage in such transportation; . . ."

Respondent contends that in view of the language of Section 1(c), Section 4(a) has no applicability to any motor vehicle with a seating capacity of eight passengers or less. Stating it another way, it is the position of respondent that the jurisdiction of the Commission, insofar as vehicles of eight passengers or less, is limited to rates and insurance, and that no authority is required from the Commission in regard to such vehicles, regardless of the nature of the operations. The Commission's staff maintains that Sections 1(c) and 2(d) have to be read and considered in conjunction with each other, and that all vehicles, regardless of size, which operate between fixed termini and on regular schedules are subject to the certificate requirements of the Commission, pursuant to Section 4(a). The Commission's staff maintains that the phrase, "other vehicles having a seating capacity of eight passengers or less," has reference only to vehicles used in performing a type of taxicab service. The intervenors support the staff's position.

Section 2(d), in no uncertain terms, prohibits taxicabs, which are also limited to a seating capacity of eight passengers or less, from operating between fixed termini and on regular schedules. The question then is whether or not it was intended, under the Compact, to permit other vehicles, of the same seating capacity as taxicabs, to operate with complete immunity from the certificate requirements of the Commission, and, at the same time, deny such complete immunity to operators of taxicabs.

The Commission is of the opinion, and so concludes as a matter of law, that the proper construction to be placed on Section 1(c) is that it must be construed in conjunction with Section 2(d), thereby imposing the same restriction on other vehicles of eight passengers or less as are imposed on taxicabs. If Sections 1(c) and 2(d) were combined as they are in the Federal Motor Carrier Act and other state motor carrier acts, the section would read substantially as follows:

"Notwithstanding the provisions of paragraph (a) of this section, this Act shall apply to taxicabs and other vehicles having a seating capacity of eight passengers or less in addition to the driver thereof (other than a vehicle operated with the approval of the Commission, between fixed termini on regular schedules), used for the purpose of accepting or soliciting passengers for hire in transportation subject to this Act along the public streets and highways, as the passengers may direct, with respect only to (i) the rate or charges for transportation from one signatory to another within the confines of the Metropolitan District, and (ii) requirements for minimum insurance coverage."

The above construction is dictated by several reasons:

(1) If the Compact were construed so as to permit vehicles of eight passengers or less, other than taxicabs, to operate between fixed termini and on regular schedules without authority from this Commission, a taxicab operator could escape the restrictions against operating between fixed termini and on regular schedules by merely removing his taxicab destination and being classified in the "other vehicle" category. In fact, if the respondent's construction of Section 1(c) were upheld, there would have been no bona fide reason for Section 2(d) being made part of the Compact.

(2) Section 8 of Article XII, Title II, of the Compact sets forth the duty and power of the Commission to prescribe taxicab rates. Nowhere in the Compact is there a provision setting forth the duty and power of the Commission to prescribe rates for vehicles of eight passengers or less other than taxicabs. Section 5 of Article XII, Title II, of the Compact sets forth the power of the Commission to prescribe fares for operators of all other vehicles, except taxicabs.

(3) The parenthetical phrase, "other than a vehicle operated, with the approval of the Commission, between fixed termini on regular schedules," contained in Section 2(d), clearly contemplates that vehicles which operate between fixed termini and on regular schedules shall be operated only after the approval by the Commission.

(4) There is not a scintilla of evidence in the legislative history preceding the enactment of the Compact which would evidence an intent to relax the regulatory scheme. Both the Federal Motor Carrier Act and the state motor carrier acts of Virginia and Maryland contain the typical taxicab exemption which prohibits operations of vehicles, regardless of size, between fixed termini and on regular schedules without appropriate approval from the regulatory authorities.

(5) Perhaps, the overriding reason for interpreting Sections 1(c) and 2(d), as indicated herein, is that such interpretation is the only interpretation through which the Commission can effectuate the purpose of the Compact. The primary purpose of the Compact was to give this Commission the power to do those things necessary to facilitate the movement of the masses of people within the Washington Metropolitan District. The backbone of the transportation facilities and services required to move the masses of the people consists of the carriers who are engaged in regular routed and scheduled operations. These carriers have a duty to operate over regular routes, pursuant to schedules approved by this Commission twenty-four hours a day, to the end that the needs of the public are met. If an operator were at liberty to operate eight passenger vehicles, without first seeking approval from this Commission, over the specified regular routes of the carriers and on schedule, such a practice would seriously undermine and literally destroy the mass transportation system in this area. The Commission cannot believe that such practice was contemplated under the terms of the Compact.

Under the above statutory construction, the Commission concludes that the transportation of passengers by Montgomery Charter Service, Inc., between its terminal in Montgomery County, Maryland, and the Washington National Airport, on regular schedules, is in violation of Section 4(a) of Article XII, Title II, of the Compact in that no certificate of public convenience and necessity has been issued by this Commission authorizing such transportation.

The transportation of school children to and from schools is specifically exempt from the Commission's jurisdiction under Section 1(a)(3) of Article XII, Title II, of the Compact.

The Commission concludes that the on-call transportation being performed by respondent from Montgomery County to the Washington National Airport and other points in the Metropolitan District is a type of taxicab operation, such transportation being at the direction of the passenger and not between fixed termini or on regular schedules, and not subject to the requirements of Section 4(a) of Article XII, Title II, of the Compact.

Insofar as the transportation service being performed under contract with Vitro Laboratories is concerned, and based on the limited evidence of record, it appears that such transportation is not performed between fixed termini or on regular schedules. It is not clear as to whether the passenger or the Vitro Laboratories directs the movement of the vehicles. In any event, the Commission concludes that, based on the evidence adduced at the hearing, the transportation performed for Vitro Laboratories is a type of taxicab operation and not subject to the requirements of Section 4(a) of Article XII, Title II, of the Compact.

The Commission concludes that when all pertinent provisions of the Compact are considered that it is the clear intent thereof to require the approval of the Commission, pursuant to Section 4(a) of Article XII, Title II, for the operation of all motor vehicles, regardless of size, between fixed termini and on regular schedules.

THEREFORE, IT IS ORDERED that Montgomery Charter Service, Inc., be, and it is, hereby ordered to cease and desist from transporting persons for hire, on a scheduled basis, between its terminal in Montgomery County, Maryland, or other fixed location, and the Washington National Airport.

BY DIRECTION OF THE COMMISSION:

A handwritten signature in dark ink, appearing to read 'Delmer Ison', is written over the printed name.

DELMER ISON
Executive Director